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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,753	12/08/2003	R. Brent Saunders	70426	4480
27975 7590 02/06/2008 ALLEN, DYER, DOPPELT, MILBRATH & GILCHRIST P.A. 1401 CITRUS CENTER 255 SOUTH ORANGE AVENUE P.O. BOX 3791 ORLANDO, FL 32802-3791			EXAMINER JAIN, RAJ K	
			ART UNIT 2616	PAPER NUMBER
			NOTIFICATION DATE 02/06/2008	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

creganoa@addmg.com

Office Action Summary	Application No. 10/730,753	Applicant(s) SAUNDERS ET AL.	
	Examiner Raj K. Jain	Art Unit 2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 November 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters; prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,5,6,10-12,16-18,20 and 23 is/are rejected.
- 7) ☒ Claim(s) 7-9,13-15,19,21 and 22 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 5, 6, 10-12, 16-18, 20 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hebeler et al (USP 6,304,756 B1) in view of Persinotti (USP 4,578,815).

Regarding claims 1, 10, 12 and 16, Hebeler discloses a method of conducting communications between respective transceivers (Fig. 1) of a communication network using a selected portion of a prescribed communication bandwidth (Fig. 4) containing a plurality of sub-bandwidth channels 1, 2 (fig. 4), said method comprising the steps of:

(a) monitoring said prescribed communication bandwidth for the presence of communication activity on said sub-bandwidth communication channels (col 2 line 8-11), and identifying those ones of said sub-bandwidth communication channels which are absent communication activity as clear channels available for use by said respective transceivers (col 2 lines 13-16); and

(b) causing said respective transceivers to conduct communications there between using selected ones of said clear channels identified in step (a) (col 2 lines 9-15) wherein said communication network contains a master site transceiver and a plurality of remote site transceivers, and wherein communications within said network

are between said master site transceiver and said remote site transceivers (Fig. 1, base station is master site and handset is remote site); and

(a2) causing each remote site transceiver to transmit to said master site transceiver a message identifying clear channels identified thereby in step (a1) (Fig.2; col 3 line 60 – col 4 lines 8, after handset scans available channels it sends the information to base station in step 202; col 4 lines 39-45), and (a3) causing said master site transceiver to broadcast to each of said remote site transceivers a communication control message containing an aggregate identification of clear channels based upon clear channel identifying messages transmitted by said remote site transceivers to said master site transceiver in step (a2) (Fig. 2B; col 2 lines 12-18; col 4 lines 8-16).

Hebeler fails to disclose a messaging sequence instructing remotes sites to perform a prescribed bandwidth scan.

Persinotti discloses a master site transceiver to transmitting a prescribed message that is detectable by each of said remote site transceivers and, in response to said prescribed message, causing each remote site transceiver to monitor said prescribed communication bandwidth for effective communication activity on said sub-bandwidth communication channels, and to identify which of said sub-bandwidth communication channels appear to said each remote site transceiver to be absent effective communication activity and thereby constitute clear channels available for use (abstract; col 1 lines 34-39; col 8 line 64 – col 10 lines 27). While Hebeler's invention periodically scans given bandwidth to determine available channels for use, it however does not receive specific instructions from a master site to perform the scanning

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procedure. Whereas Persinotti discloses specific instructions from a master site (or base station) to mobile site to perform and monitor a given bandwidth and then send back the information indicating channel availability to the master site for use as appropriate. Persinotti's invention allows for on-demand use of a channel by determining its availability rather than waiting for the remote site to perform the scan and send the information back to the master site for use. Thus it would have been obvious at the time the invention was made to incorporate the teachings of Persinotti within Hebeler so as to enhance the scanning operation based on demand rather than wait for the remote site to respond back periodically.

Regarding claims 2, 11 and 17, Hebeler discloses conducting communications therebetween by sequentially using respectively different ones of said selected ones of said clear channels identified in step (a) (claim 1, random selection of channel is made as appropriate).

Regarding claim 5, Persinotti discloses master site transceiver to transmit a predetermined preamble as part of said prescribed message, said predetermined preamble being monitored by each of said remote site transceivers and, in response to said predetermined preamble, causing each remote site transceiver to monitor said prescribed communication bandwidth for effective communication activity on said sub-bandwidth communication channels, and to identify which of said sub-bandwidth communication channels appear to said each remote site transceiver to be absent effective communication activity and thereby constitute clear channels available for use

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(col 9 lines 20-54, a deallocation instruction set is included in the message as part of the preamble). Reasons for combining same as for claim 1.

Regarding claims 6 and 18, Persinotti discloses communication control message broadcast by said master site transceiver contains information representative of a sequence of respectively different ones of said clear channels as broadcast in step (a3) that are to be sequentially employed for conveying messages between said master site transceiver and said remote site transceivers (col 5 lines 18-32). Reasons for combining same as for claim 1.

Regarding claim 20, Persinotti discloses conducting a prescribed message exchange between said master site transceiver and a remote site desiring to join said communication network, in order to enable said remote site desiring to join said communication network to participate with said master site (col 2 lines 13-57). Reasons for combining same as for claim 1.

Regarding claim 23, Persinotti discloses broadcasting, from said master site transceiver, a media access message comprised of a prescribed plurality of clear channel frequencies (col 4 lines 66-68, master site informs remotes site available channel for use); (e1) broadcasting, from said master site transceiver, a data message containing information intended for a remote site transceiver (col 5 lines 1-3) at said remote site transceiver, in response to detecting said media access message broadcast from said master site transceiver in step (e1), monitoring said communication network and receiving said data message broadcast from said master site transceiver in step (col 5 lines 11-31). Reasons for combining same as for claim 1.

Allowable Subject Matter

Claims 7-9, 13-15, 19, 21 and 22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments with respect to claims 1, 2 and 5-23 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raj K. Jain whose telephone number is 571-272-3145. The examiner can normally be reached on M-F 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chi Pham can be reached on 571-272-3179. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic

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Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Raj K. Jain

/Raj K. Jain/

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January 25, 2008